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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,453	06/30/2003	James Harold Gray	ATT030073	1614
34399 7590 09/23/2008 GARLICK HARRISON & MARKISON P.O. BOX 160727 AUSTIN, TX 78716-0727				
EXAMINER				
SALCT, JASON P				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/611,453

Applicant(s)

GRAY ET AL.

Examiner

Jason P. Salce

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19, 45-50 and 76-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-19, 45-50 and 76-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 6/12/2008 have been fully considered but they are not persuasive.

Applicant has amended the independent claims, however claim 14 still reads on the prior art of record (**see below**). The examiner further notes that arguments regarding independent claim 45 are moot in view of the new grounds of rejection below.

In response to the arguments regarding the 112 first paragraph, the rejection has been withdrawn.

In response to the arguments regarding the 101 rejection, Applicant has argued that the language of the claim defines a computer program product, rather than a signal. The examiner notes that the claim limitation "computer program product" is clearly defined in Applicant's specification as either a memory device in Paragraph 0025, Lines 1-14 or a transmission signal at Paragraph 0025, Lines 14-20. Therefore, the 101 rejection stands for the claims being directed to a carrier wave (see MPEP 2106).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Paragraph 0025 of Applicant's specification states that a computer product program (which includes a machine-readable medium)

can be downloaded as a transmission signal (from a remote computer to a requesting computer), which is non-statutory under 35 U.S.C. 101 (see MPEP 2106[R-6] IV B).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-17, 19, 45-48, 50, 76-79 and 81 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Blacketter et al. (U.S. Patent No. 7,237,253).

Referring to claim 14, Blacketter discloses receiving at a user device an indicator signal from an interactive television service provider's network (**see step 300 in Figure 9**), the indicator signal indicating availability and location of alternative content (**see Figure 11 for the transmitted table of information (hot key signal) including data that indicates availability and location of alternative content**) and containing data representing an indicator form (**see Figure 11 for the table containing a web address**).

Blacketter discloses determining, at the user device and independent of any request by a user of the user device for the alternate content (**see steps 302-306 for**

determining whether an interactive mode is available for a received television channel, and is therefore independent of any request by a user), whether the indicator signal is relevant to a user viewing original content provided by the interactive television service provider's network **(see steps 302-310 in Figure 9 for determining an interactive mode based on the received television program).**

Blackketter discloses responsive to determining the indicator signal is relevant to the user, displaying on a screen an indication that the indicator signal has been received, the indication corresponding to the data representing the indicator form **(see steps 312-314 in Figure 9).**

Blackketter also discloses that the subject matter of the alternative content is different from the subject matter of the original content **(see Figures 5-6 for the interactive mode being selected and displaying travel information that is different from the displayed television program).** Applicant has not specifically claimed how the alternative content is "different", therefore, broadly interpreted the alternative can be different from the original content by the type of information displaying, the format regarding how the alternative content is displayed, or where the data was transmitted from.

Blackketter also discloses that the determining is based at least in part on a channel providing the original content presently being viewed by the user **(see steps 302-306 for determining alternative content based on the television channel currently being viewed).**

Referring to claim 15, Blackketter discloses that the data representing the indicator form indicates one of a plurality of possible hot key forms (**see Figure 11 for the indicator form (web address) being one of a plurality of possible web addresses**).

Referring to claim 16, Blackketter discloses that the data representing the indicator form comprises a graphic (**see Column 7, Lines 30-32**).

Referring to claim 17, Blackketter discloses that the graphic is displayed on the screen as the indication that the indicator signal has been received (**see step 312 in Figure 9 for displaying an indicator that an interactive mode is available**).

Referring to claim 19, Blackketter discloses that the graphic is not included in the hot key signal (**see Column 4, Lines 30-46 for the user interface graphics being generated by the interactive television device 108 and further note Figure 11 for the hot key signal only containing the data used to determine if an interactive or online mode is available for a television program**).

Referring to claims 76-79 and 81, see the rejection of claims 14-17 and 19, respectively.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blacketter et al. (U.S. Patent No. 7,237,253).

Referring to claim 18, Blacketter discloses all of the claim limitations of claim 1, but fails to teach that the graphic is pre-selected by the user.

The examiner takes Official Notice that a graphics data that can be pre-selected by a user. For example, it is well known in the art for a user to prefer to see a button as opposed to a check box and select the button instead of a check box in accordance with a user's preference.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify receiver software, as taught by Blacketter, to include GUI display preference settings, as taught by the Examiner's Official Notice, for the purpose of providing a user interface that is aesthetically pleasing and intuitive to a user.

Referring to claim and 80, see the rejection of claim 18.

Claims 45-58 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blacketter et al. (U.S. Patent No. 7,237,253) in further view of Field et al. (U.S. Patent No. 6,018,764).

Referring to claim 45, see the rejection of claim 1 and further note that although Blacketter teaches a tuner, receiver, and demodulator portion (**see Figure 2**), Blacketter fails to teach a demultiplexer portion.

Field discloses a demultiplexer 205 coupled to a CPU 215 for extracting indication signals in Figure 3 and Column 7, Lines 27-46.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the receiver/client device, as taught by Blacketter, using the demultiplexer, as taught by Field, for the purpose of providing a system for allowing a user to access Web pages and other Internet resources via a broadcast data stream (**see Column 3, Lines 27-30 of Field**).

Referring to claims 46-48 and 50, see the rejection of claims 15-17 and 19, respectively.

Referring to claim 49, see the rejection of claim 18.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason P Salce/
Primary Examiner, Art Unit 2623

Jason P Salce
Primary Examiner
Art Unit 2623

September 17, 2008